

EMPLOYER STATUS DETERMINATION

StatesRail, Inc.

This is the determination of the Railroad Retirement Board concerning the status of StatesRail, Inc. (SRI) as an employer under the Railroad Retirement Act (45 U.S.C. § 231 et seq.)(RRA) and the Railroad Unemployment Insurance Act (45 U.S.C. § 351 et seq.)(RUIA).

Ms. Eugenia Langan, an attorney with the law firm Shea & Gardner, provided information regarding SRI. According to Ms. Langan, SRI is a privately-held corporation which operates as a holding company for assets of its railroad subsidiaries. She stated that SRI was incorporated on July 26, 1996. SRI's president and chief executive officer is J. Peter Kleifgen. Information provided by Ms. Langan indicates that Kauri L.L.C. (Kauri) owns over 97 percent of the stock of SRI and that SRI owns 100 percent of the stock of Kyle Railways, Inc. (KRI) (B.A. No. 9003). KRI owns and controls five railroads:

- (1) The Arizona Eastern Railway Company (B.A. NO. 3766),
- (2) The Eastern Alabama Railway (B.A. No. 5346),
- (3) The Kyle Railroad Company (B.A. No. 3756),
- (4) The San Joaquin Valley Railroad Company (B.A. No. 3780), and
- (5) SWKR Operating Company, Inc. (B.A. No. 2761).

See also, Surface Transportation Board Finance Docket No. 33340, decided April 4, 1997.

Section 1(a)(1) of the RRA defines the term "employer" to include:

- (i) any carrier by railroad subject to the jurisdiction of the Surface Transportation Board under part A of subtitle IV of Title 49;
- (ii) any company which is directly or indirectly owned or controlled by, or under common control with, one or more employers as defined in paragraph (i) of this subdivision, and which operates any equipment or facility or performs any service (except trucking service, casual service, and the casual operation of equipment or facilities) in connection with the transportation of passengers or property by railroad . . . [45 U.S.C. §231(a)(1)(i) and (ii)].

The RUIA contains the same definition.

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The information summarized above indicates that SRI does not operate, and never has operated, as a rail common carrier. SRI is not a carrier by railroad within the meaning of section 1(a)(i) of the RRA. The evidence indicates that SRI is not owned or controlled by a rail carrier employer. Accordingly, the Board must address whether SRI, as the parent of several railroad subsidiaries, is "under common control with [those subsidiaries]."

A decision of the United States Court of Appeals for the Federal Circuit regarding a claim for refund of taxes under the Railroad Retirement Tax Act (45 U.S.C. §3201 et seq.) held that a parent corporation

which owns a rail carrier subsidiary is not under common control with the subsidiary within the meaning of 26 U.S.C. §3231. Union Pacific Corporation v. United States, 5 F.3d 523 (Fed. Cir. 1993). The facts in the Union Pacific case are indistinguishable from those presented in SRI's case. Accordingly, a majority of the Board, Labor Member dissenting, finds that StatesRail, Inc. is not and has never been an employer covered by the Railroad Retirement Act and the Railroad Unemployment Insurance Act because it is not under common control with its rail carrier subsidiaries.

FOR THE BOARD
Beatrice Ezerski
Secretary to the Board